

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT  
(CITY ATTORNEY)**

This Amended and Restated Employment Agreement ("Agreement") is made and entered into this 9<sup>th</sup> day of June, 2015 ("Execution Date"), by and between the City of Glendale, a California charter city and municipal corporation (hereinafter referred to as the "City"), and Michael J. Garcia (hereinafter referred to as "City Attorney" or "Garcia"). City and City Attorney are sometimes referred to herein as the "Parties."

**WHEREAS**, the City, acting through its City Council, hired Garcia to perform the duties and responsibilities of City Attorney outlined under the Glendale City Charter and Glendale Municipal Code, pursuant to that certain City Attorney Employment Agreement dated July 26, 2011 ("First Employment Agreement");

**WHEREAS**, Garcia commenced working as the City's City Attorney, effective September 2, 2011; and

**WHEREAS**, the City and Garcia desire to enter into this Amended & Restated Employment Agreement to establish the terms of Garcia's continued employment relationship with the City.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree as follows:

**1. Effective Date.** The terms of this Agreement shall become effective on July 1, 2015 ("Effective Date").

**2. Employment.** The City hereby agrees to employ Garcia as the City Attorney of the City of Glendale in an at-will capacity, subject to the terms of this Agreement, to perform the functions and duties specified in the City Charter, the Glendale Municipal Code and the Ordinances, Resolutions, and Motions of the City Council, the policies of the City of Glendale, and to perform such other legally permissible duties and function as the City Council shall assign from time to time.

**3. Term.**

The terms of this Agreement shall commence on July 1, 2015, and shall remain in effect until terminated by either party as provided in Section 10 hereof.

**4. Salary.**

a. Commencing on the Effective Date, the City Attorney's base salary shall be Twenty Thousand Seven Hundred Thirty-Four Dollars (\$20,734) per month (or \$248,808 per year). The City Attorney's salary shall be subject to withholding and other

applicable taxes, and shall be payable to City Attorney at the same time as other employees of the City are paid.

b. Commencing on July 1, 2018, City shall adjust the City Attorney's base salary to the average salary for City Attorneys as determined by a survey of comparable cities used by the City for salary comparison purposes, or by five percent (5%), whichever is less; provided that the City Attorney's base salary shall not be decreased as a result of this provision.

c. Commencing on July 1, 2019, City shall adjust the City Attorney's base salary to the average salary for City Attorneys as determined by a survey of comparable cities used by the City for salary comparison purposes, or by five percent (5%), whichever is less; provided that the City Attorney's base salary shall not be decreased as a result of this provision.

d. Commencing on July 1, 2020 and every anniversary date of the Effective Date thereafter, the Council shall give reasonable and good faith consideration to additional market adjustments in its sole discretion.

a. For purposes of making adjustments to the City Attorney's salary in accordance with subsections b. and c. of this Section 3, above, the survey cities to be used for comparison purposes shall be mutually agreeable to City and City Attorney. By way of example but not limitation, as of the date of this Agreement, the comparison cities used to survey City Attorney salaries are: Anaheim, Burbank, Inglewood, Pasadena, Santa Monica, and Torrance.

**5. Retirement.** The City is a member of the Public Employees Retirement System (PERS) and the City Attorney's retirement formula shall be "2.5% at 55." The percentages of the City's contribution and City contribution shall be as established by City ordinance or resolution for City non-safety employees hired before January 1, 2011. By way of reference, as of the date of this Agreement, non-safety employees hired before January 1, 2011 shall pay the employee's share equal to eight percent (8%) of the employee's gross salary and the portion of the employer's share equal to three percent (3%) of gross salary.

**6. Automobile Allowance.** City shall pay City Attorney an automobile allowance in accordance with the auto allowance program for City Executives.

**7. Benefits.** City Attorney shall receive all benefits, including but not limited to medical, dental, vision, vacation, sick leave, life insurance, and executive leave, all in accordance with City ordinances, resolutions policies and programs applicable to Executives.

**8. Duties and Powers of City Attorney; Roles of Council and City Attorney.** City Attorney shall have, and shall carry out, the powers and duties of the



City Attorney as set forth in the Glendale City Charter, Glendale Municipal Code, and all ordinances, resolutions, motions, and administrative policies enacted thereunder.

a. Recruitment and Appointment of Attorneys. City Attorney shall engage in the recruitment and selection of subordinate attorney positions (Deputy, Assistant, Senior Assistant, Principal Assistant, Chief Assistant City Attorney positions to fill a vacancy in a position caused by termination, resignation, retirement or for any (other reason. Other than to comply with applicable law (e.g. appropriating funds) that would require Council approval of a specific action, the authority to recruit and select attorneys shall lie with the City Attorney, subject only to the City Council's authority – under the City Charter - to either approve or reject the attorney selected by the City Attorney.

## **9. Performance Evaluations of City Attorney**

a. Annual performance evaluations are an important way for the City Council and City Attorney to ensure effective communications about expectations and performance.

b. The City Council recognizes that for the City Attorney to respond to its needs and to grow in the performance of the City Attorney's job, City Attorney needs to know how the City Council Members evaluate the City Attorney's performance.

c. To assure that the City Attorney gets this feedback, the City Council shall conduct an evaluation of City Attorney's performance at least once each year. The City and the City Attorney agree that performance evaluations, for the purpose of providing additional input and feedback, may occur quarterly or several times during each calendar year. The Parties may use an outside facilitator paid by City funds to assist them in conducting this evaluation, upon the mutual agreement of the City Council and the City Attorney, to be paid by the City.

d. During the annual evaluation process, the City Attorney and the City Council will create goals or other outcome measures that will provide the basis for assessing the next year's performance.

e. The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Attorney. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Attorney.

f. The City Council and the City Attorney shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and City Attorney shall further establish a relative priority among those goals and performance objectives.

## **10. Termination of Agreement:**

a. Voluntary Resignation by City Attorney: City Attorney may voluntarily resign his position as City Attorney, after giving City at least forty-five (45) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or in part by the City Council. In the event the City Attorney resigns from his employment, other than the provisions of this Agreement that are intended to survive termination, this Agreement shall terminate and City Attorney shall not be entitled to any Severance, which is authorized under Section 11 hereof for involuntary terminations only.

b. At Will Employment; Termination by Council: The position of City Attorney is an at-will position. This Agreement does not grant the City Attorney any property interest in continued employment with the City. The City Council may, by majority vote of the Council, remove the City Attorney and terminate this agreement at any time, with or without cause. Notice of termination shall be provided to the City Attorney in writing, provided adoption of a motion, certified by the City Clerk, shall constitute a sufficient writing.

**11. Severance Terms:** Notwithstanding Section 10(b), should the City Attorney's employment be involuntarily terminated by the City at any time, for any reason other than conviction of a felony or conviction of a crime, felony or misdemeanor, involving moral turpitude or illegal personal gain to City Attorney, City shall pay City Attorney severance benefits as follows:

a. City shall pay City Attorney a lump sum payment equal to twelve (12) months of City Attorney's then monthly salary ("Severance Lump Sum Payment").

b. In addition, the City shall extend to the City Attorney the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay Garcia COBRA coverage for the same number of months (12) for which the City Attorney is entitled to lump sum payment above, or until Garcia either secures full-time employment or obtains other health insurance, whichever of these three events first occurs ("COBRA payments"). The Severance Lump Sum Payment and the COBRA payments shall together be referred to herein as the "Severance." Garcia shall notify the City within five days of securing new full-time employment or insurance.

c. City's obligation to pay the Severance is subject to and will not be paid until the City Attorney executes a waiver and release agreement substantially similar to that one set forth as Exhibit "A" to this Agreement, attached hereto and incorporated herein by this reference.

d. For purposes of this Section 11 only, involuntary termination requiring payment of the Severance shall include:



i. A vote by a majority of Council to remove the City Attorney or ask for his resignation at any time, with or without cause; or

ii. At the City Attorney's election, a vote by a majority of Council to disapprove or reject the City Attorney's selection of a Deputy, Assistant, Senior Assistant, Principal Assistant or Chief Assistant City Attorney. City Attorney must notify the City Council within one (1) week of his decision to treat the Council's rejection as an involuntary termination. This paragraph applies only to in-house position, and does not apply to the retention of outside counsel, which is also subject to Council approval.

e. Repayment of Severance in the Event of Conviction of Abuse of Office. As required by Government Code Section 53243.3 (or any successor provision), in the event the City has paid the Severance and City Attorney is subsequently convicted of a crime involving the abuse of his or her office or position as City Attorney of Glendale, then City Attorney shall full reimburse the City for all cash payments made under the Severance provisions of this Agreement. As used herein, "abuse of office or position" shall have the meaning ascribed to it under Government Code Section 53243.4 (as may be amended or under any successor provision), which currently means either "an abuse of public authority, including but not limited to, waste, fraud, and violation of the law under color of authority", or "a crime against public justice, including but not limited to a crime in Title 5 (commence with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code."

**12. Indemnification.** City shall defend and indemnify City Attorney and pay any costs, legal fees, and judgments assessed against City Attorney arising out of an act or omission occurring in the course and scope of City Attorney's performance of his duties under this Agreement. Notwithstanding the foregoing, however, City shall not be required to defend or indemnify City Attorney for claims, actions, damages, fees or actions when defense or indemnity is prohibited, restricted or limited by law, including without limitation California Government Code Sections 825 and 995.2 through 995.8.

**13. Abuse of Office or Position.** Pursuant to Government Code Sections 53243, 53243.1 and 53432, which became effective on January 1, 2012, if City Attorney is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if City Attorney is provided with administrative leave pay pending any investigation, City Attorney shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Attorney (which would be in City's sole discretion, as it is generally not obligated to pay for a criminal defense), City Attorney shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance payments related to the termination that City Attorney may receive from City shall be fully reimbursed to City or void if not yet paid to City Attorney. For purposes of this Section 13, "abuse of office or position" means either: (1) an abuse of public authority, including but not limited to, waste, fraud, and

violation of the law under color of authority, or a crime against public justice, including but not limited to a crime in Title 5 (commence with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

**14. Memberships, Conferences, Teaching and Speaking (Professional Development):** City shall pay for City Attorney's membership in traditional organizations of benefit to a City Attorney and the City, including the League of California Cities ("LCC") and International Municipal Lawyers' Association ("IMLA"), and other organizations as determined necessary and appropriate by Garcia for the professional enrichment of the City Attorney and benefit to the City, subject to the Legal Department budget. City shall pay for registration, travel, accommodations, meals, etc. for LCC and IMLA conferences and other conferences, as deemed reasonably necessary by the City Attorney and subject to the departmental budget.

**15. Integration of Agreement.** This Agreement contains the entire Agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning City Attorney's employment with the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

**16. Amendments.** Amendments to this Agreement are effective only upon City Council and City Attorney's express written approval.

**17. Notices.** All notices pertaining to this Agreement shall be sent to:

GARCIA: Michael J. Garcia  
At the most recent address on file in Garcia's  
Personnel file held by the CITY.

CITY: City Clerk  
City of Glendale  
613 East Broadway, Suite 100  
Glendale, California 91206

COPY TO: City Manager  
City of Glendale  
613 East Broadway, Suite 200  
Glendale, California 91206

Such notice shall be deemed made when personally delivered, transmitted by facsimile, or when mailed, 48 hours after deposit in the U.S. Mail, first class postage



prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**18. Survival Provisions.** Many sections of this Agreement are intended by their terms to survive the City Attorney's termination of employment with the City, such as Sections 11, 12 and 13. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

**19. Severability and Interpretation of Contract Terms.** It is the intent of the parties that the sentences, paragraphs and provisions of this Employment Agreement are severable. Should one or more sentences, paragraphs or provisions of this Employment Agreement be found to be unenforceable, the unenforceable sentences, paragraphs or provisions shall be severed and the remaining sentences, paragraphs or provisions shall be given full force and effect. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions.

**[SIGNATURE PAGE TO FOLLOW.]**

**IN WITNESS WHEREOF**, City and City Attorney have caused this Amended and Restated Employment Agreement to be executed this 9<sup>th</sup> day of June, 2015.

"City"  
City of Glendale

Dated: 6-9-15

By:   
Ara Najarian  
Mayor

"City Attorney"  
Michael J. Garcia

Dated: 6/5/15

By:   
Michael J. Garcia



## EXHIBIT "A"

### FORM OF WAIVER AND RELEASE

I, the undersigned, do hereby acknowledge and attest that I have read and understood section 10 of my Amended and Restated Employment Agreement with the City of Glendale and hereby agree that by accepting twelve (12) months lump sum of current salary (\$\_\_\_\_\_) [12 x current monthly base salary] along with up to twelve (12) months of COBRA payments as described in said Amended and Restated Employment Agreement (together, the "Severance"), I agree to waive all rights to further claims, remedies, or legal action against the City, its officers and employees.

In exchange for receipt of the Severance, I and my representatives, heirs, successors, and assigns do hereby completely release and forever discharge the city of Glendale and its related entities and their present and former officers, directors, council members, agents, employees, attorneys, and successors (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which I may have now or in the future arising from any act or omission or condition occurring on or prior to the date this waiver is signed whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims"). Released Claims shall also include, but not be limited to, claims for wages or other compensation due, severance pay, bonuses, sick leave, vacation pay, life or health insurance, or any other fringe benefit.

Employee knowingly and voluntarily waives any and all rights or benefits that he may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing below, the Employee acknowledges that he or she has read and understands this waiver and voluntarily and knowingly is waiving his right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, actions, obligations, liabilities and causes of action of any kind.

\_\_\_\_\_  
Initials of Employee

Employee shall not file any claim, sue or initiate against any Released Party, any compliance review, action, or proceeding or participate in the same, individually or as a member of a class, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims.

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Michael J. Garcia